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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,782	01/29/2001	Daniel P. Kelly	A00219US (98361.3)	8325

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EXAMINER

LEE, EDMUND H

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 03/31/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/771,782

Applicant(s)

KELLY, DANIEL P.

Examiner

EDMUND H LEE

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2003 and 30 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-45 and 47-49 is/are pending in the application.
- 4a) Of the above claim(s) 44 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-43 and 47-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 10
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 37-43 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bateholts (USPN 1958841) in view of the admitted prior art as set forth on page 1 in the instant specification. In regard to claim 37, Bateholts teaches the basic claimed process including a method of making a necklace (pg 1, Ins 1-10; figs 1-4); providing a mold of beads for a necklace wherein the beads can be spherical or cylindrical (figs 1-4); placing a string or other line or cord in the mold (figs 1-4); supplying plastic to the mold (figs 1-4); removing from the mold a necklace formed of beads directly molded onto the string or line or cord. However, Bateholts does not teach beads having a sport projectile shape. The admitted prior art teaches necklaces containing baseball or football beads. Bateholts and the admitted prior art are combinable because they are analogous with respect to beaded necklaces. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to redesign the mold cavities of the mold members of Bateholts to have the shape of sport projectiles as taught by the admitted prior art in order to diversify the product line of Bateholts and fill a public demand. In regard to claims 38-43 and 47-49, Bateholts does not teach adding a sports projectile bead larger than the other beads; molding football beads; molding baseball beads; molding soccer beads; molding hockey

Art Unit: 1732

beads; attaching one or more pendants to the necklace wherein the pendant is larger than the projectile shaped beads; attaching a two colored pendant to the necklace; using a sport logo shape pendant. The admitted prior art teaches using football beads; and using baseball beads. Since Bateholts and the admitted prior art are combinable for the above reasons, it would have been obvious to one of ordinary skill in the art at the time the invention was made to mold any of the necklaces of the admitted prior art by the process of Bateholts in order to efficiently mold them. In regard to adding a sports projectile bead larger than the other beads, such is well-known in the necklace art. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a sports projectile bead larger than the other beads to the necklace of Bateholts (modified) in order to broaden the appeal of the necklace. In regard to providing/attaching a two colored pendant to the necklace, necklaces having a two colored pendant are well-known in the necklace art for their aesthetic appeal. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide/attach a two colored pendant to the necklace of Bateholts in order to diversify the aesthetic appeal of the necklace. In regard to using a sport logo shape pendant, it is well-known in the necklace art to attach sport logo shaped pendants to necklaces to display a fan's excitement for a team. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a sport logo shaped pendant as the pendant of Bateholts (modified) in order to appeal to diversify the aesthetic appeal of the necklace.

Art Unit: 1732

3. Applicant's arguments with respect to claims 37-43 and 47-49 have been considered but are moot in view of the new ground(s) of rejection.

It should be mentioned that the admitted prior art also teaches using beads that are *typically* however, this teaching does not teach away from the well-known existence of necklaces having sport shaped beads. Further, the use of the word "typically" implies that solid sport beads are also well-known in the beaded necklace art.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hawkins (USPN Des 322230) teaches a beaded necklace having a pendant attached thereto. Ross (USPN 2298591) teaches a beaded necklace having a larger pendant attached thereto. Belin (USPN 4351166) teaches a beaded ring having beads with football shapes. Both McConnell et al (USPN 5626248) and James (Des 434555) teach ornamental sport beads of various sports.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDMUND H LEE whose telephone number is 703.305.4019. The examiner can normally be reached on MONDAY-THURSDAY FROM 9AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAN H SILBAUGH can be reached on 703.308.3829. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7718 for regular communications and 703.305.3599 for After Final communications.

Art Unit: 1732

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

703.308.0661.


EDMUND H LEE
Examiner
Art Unit 1732

3/26/03

EHL
March 26, 2003